

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

AFFIRMATION

- against -

Dkt # 2011SU007884

THOMAS M. MOROUGHAN

Petitioner.

-----X

STATE OF NEW YORK     )  
                                      ) ss:  
COUNTY OF SUFFOLK     )

ANNE E. OH, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am an Assistant District Attorney of Suffolk County, of counsel to THOMAS J. SPOTA, District Attorney of Suffolk County, attorney of record for the People of the State of New York. The statements made in this Affirmation are based on information contained in the files of this Office, which statements, on that basis, I believe to be true.

2. This Affirmation is submitted in response to petitioner's motion to compel the Suffolk County District Attorney's Office to "release their entire investigative file regarding the February 27, 2011 shooting of Moroughan as well as any and all documents procured through grand jury powers (Petitioner p. 21)." Respectfully, this relief requested overbroad and beyond the jurisdiction of the Court.

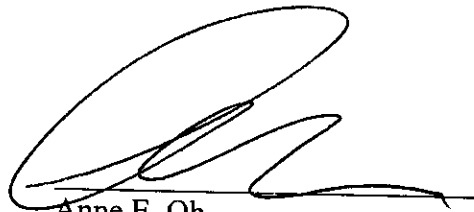
3. CPL § 190.4(a) prohibits disclosure of the "nature or substance of any grand jury testimony, evidence, or any decision result or other matter attending a grand jury proceeding" absent a written decision of the Court. This material is limited "evidence

obtained by a grand jury” for the “purpose of assisting the grand jury in conducting its investigation.” The investigative notes of the District Attorney are not contemplated within the meaning of the statute and are, therefore, not the proper focus of a motion to unseal grand jury evidence.

4. With respect to grand jury minutes, in his application, petitioner acknowledges that it is “undisputed that no evidence was ever presented to a grand jury by the Suffolk County District Attorney in this case (Petitioner, p.13).” Accordingly, there are no stenographic minutes of any grand jury proceedings contained in the District Attorney’s file to unseal.

5. Lastly, with respect to documents that were obtained pursuant to a grand jury subpoena duces tecum, we take no position on the disclosure of those documents and rely on the sound discretion of the Court.

WHEREFORE, defendant’s motion to unseal the investigative file of the District Attorney’s Office should be denied but we rely on the Court’s discretion as to the disclosure of documents that were obtained by the grand jury subpoena.



Anne E. Oh  
Assistant District Attorney

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